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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
TRENTON VICINAGE**

DONALD J. TRUMP FOR  
PRESIDENT, INC., REPUBLICAN  
NATIONAL COMMITTEE, NEW  
JERSEY REPUBLICAN STATE  
COMMITTEE,

Plaintiffs,

v.

TAHESHA WAY, in her official  
capacity as Secretary of State of New  
Jersey,

Defendant.

Hon. Michael A. Shipp, U.S.D.J.

Civil Action No. 20-10753

**CIVIL ACTION**

**(ELECTRONICALLY FILED)**

**DECLARATION OF LINDA VON NESSI IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

1. I am the Clerk for the Essex County Board of Elections (Board). I have been employed in this position for 23 years and served as Deputy Clerk for 10 years before that. In total, I have worked for the Board for 38 years. My job duties include

assisting the Board with the canvassing and counting of all ballots cast in Essex County, including all vote by mail (mail-in) ballots and provisional ballots.

2. In the July 7, 2020 Primary Election, the Board received approximately 104,925 mail-in ballots and 11,744 provisional ballots.

3. For comparison purposes, for the June 2016 Primary Election, the Board counted a total of approximately 2,672 mail-in and 2,135 provisional ballots.

4. On July 8, 2020, the Board received correspondence from the United States Postal Service (USPS) confirming that certain mail-in ballots delivered to the Board on the morning of July 8, 2020 and bearing postmarked dates of July 8, 2020 had in fact been received by USPS on or before July 7, 2020.

5. The correspondence also confirmed that certain mail-in ballots were in possession of USPS on the morning of July 8, 2020 that did not have postmarks. USPS postmarked those ballots with a July 8, 2020 date and delivered them to the Board on July 8, 2020.

6. USPS stated that based on its operational processes, it believed that the mail-in ballots located at a delivery unit on the morning of July 8, 2020 and delivered later that same day, would have been received by USPS on or before July 7, 2020.

7. On July 8, 2020, the Board received a USPS delivery of mail-in ballots with postmark dates of July 8, 2020.

8. Pursuant to P.L. 2020, c. 72 (codified as N.J. Stat. Ann. §19:63-31), the General Election will be conducted largely through mail-in ballots and provisional ballots and all otherwise valid mail-in ballots postmarked on or before November 3, 2020, and received by the Board no later than November 10, 2020 at 8:00 p.m. shall be counted. P.L. 2020, c. 72, §2, ¶¶a, m.

9. The Board cannot begin to canvass and count provisional ballots until after 8:00 p.m. on November 10, 2020 because of the risk that the Board would count a provisional ballot from a voter on or before November 10 and then receive a mail-in ballot from that same voter.

10. However, unlike with the Primary Election, the Board cannot seek any extension of time to canvass and count ballots and report the results for the meeting of the county Board of Canvassers, which must occur on or before November 20, 2020. P.L. 2020, c. 72, §2, ¶p.

11. For the November 2020 General Election, approximately 520,124 mail-in ballots will be sent to Essex County voters. Based on an anticipated turnout of 70 percent, the Board estimates that it could receive around 364,086 returned mail-in ballots by November 10, 2020 at 8:00 p.m.

12. Due to the drastically increased number of mail-in and provisional ballots to be received by the Board and the limited time provided for the review process for provisional ballots, the Board will have to begin canvassing mail-in

ballots prior to Election Day in accordance with P.L. 2020, c. 72, §2, ¶m in order to ensure that all ballots received by the Board are canvassed and counted before November 20.

13. If the Board cannot begin canvassing ballots prior to Election Day, it would need to hire and train additional staff members to review, canvass, and count ballots in order to ensure counting is completed prior to the November 20 deadline. Current staff will suffice if employees can begin canvassing mail-in ballots early. But reversing course this close to Election Day would disrupt the Board's administration of the election as it would have a minimal amount of time – just a few weeks, maybe even mere days – to recruit and train new staff while simultaneously doing all of its other duties to prepare for the election. The need for social distancing and sanitation measures at Board facilities this year makes all of these tasks – recruitment, training, and canvassing – even more difficult.

14. Without early counting, it would be difficult, if not impossible, to ensure that all votes are counted within the statutory timeframe.

15. The Board shall ensure the security and secrecy of any mail-in ballots canvassed prior to Election Day. Surveillance cameras are being installed in the counting room and any other room that ballots will be processed. The Board will have every person who scans, sorts, opens, or handles ballots canvassed prior to Election Day sign an affidavit swearing to the secrecy of any ballots. Under no

circumstances will any preliminary tallies be run and no one will have access to the room without a security officer.

16. Board staff has been made aware that they are prohibited from disclosing the contents of any mail-in ballot or the results of ballot canvassing prior to the close of polls on Election Day and that knowingly disclosing to the public the contents of a mail-in ballot prior to the closing of polls is a crime of the third degree. P.L. 2020, c. 72, §3.

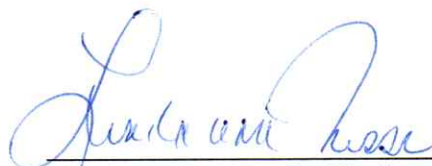
17. The Board is also awaiting the issuance of guidance from the Division of Elections on maintaining the confidentiality and secrecy of mail-in ballot canvassed before Election Day.

18. The Board's website contains information for voters about the rules and procedures of the November 2020 General Election. Essex County Board of Elections, Vote by Mail, <https://essexboardofelections.com/vote-by-mail/> (last visited Sept. 22, 2020). The website informs voters that all active registered voters will be sent a mail-in ballot for the November 2020 General Election. Id. It also states that ballots returned by mail with a postmark on or before November 3, 2020 may be counted if received by 8:00 p.m. on November 10, 2020 and that ballots without a postmark received within 48 hours of the closing of polls on November 3, 2020 shall be considered valid. Id. A true and correct copy of the Essex County Board of Elections' Vote by Mail webpage is attached hereto as Exhibit 1.

19. Since the Board has already informed voters that the it will consider valid those ballots without a postmark received by the Board within 48 hours of the closing of the polls, then invalidating the provision of P.L. 2020, c. 72 that permits the Board to do so would force the Board to revise its advice to specify to voters that mailing their ballots on Election Day might not guarantee it will be accepted by the Board if it lacks a postmark. The Board would have only a short amount of time to inform voters of an important change to election procedures. Voters might be confused or frustrated by receiving new and conflicting instructions so close to the election, and staff might become inundated with calls from voters seeking clarification or explanation, thereby disrupting staff preparations for the upcoming election.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated:



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Linda Von Nessi, Clerk